

1-1 By: Armbrister S.B. No. 522
1-2 (In the Senate - Filed February 15, 2005; February 28, 2005,
1-3 read first time and referred to Committee on State Affairs;
1-4 March 29, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 0; March 29, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 522 By: Armbrister

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the Texas Emergency Services Retirement System;
1-11 providing an administrative penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Title 8, Government Code, is amended by adding
1-14 Subtitle H to read as follows:

1-15 SUBTITLE H. TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

1-16 CHAPTER 861. GENERAL PROVISIONS

1-17 Sec. 861.001. DEFINITIONS. In this subtitle:

1-18 (1) "Actuarially sound pension system" means a system
1-19 in which the amount of contributions is sufficient to cover the
1-20 normal cost and amortize the unfunded accrued actuarial liability
1-21 in a period that does not exceed 30 years.

1-22 (2) "Auxiliary employee" means a person who receives
1-23 compensation at a rate that does not exceed the federal minimum wage
1-24 by more than \$2 an hour, as established under the Fair Labor
1-25 Standards Act of 1938 (29 U.S.C. Section 201 et seq.), for
1-26 performing emergency services and is certified by a political
1-27 subdivision of this state as being regularly engaged in the
1-28 performance of duties for a participating department in an
1-29 appointive office or position that normally requires services from
1-30 the person for fewer than 1,000 hours a year, but excludes a person
1-31 who is eligible to receive credit for the same service in either the
1-32 Texas County and District Retirement System or the Texas Municipal
1-33 Retirement System.

1-34 (3) "Commissioner" means the firefighters' pension
1-35 commissioner appointed under Section 21, Texas Local Fire Fighters
1-36 Retirement Act (Article 6243e, Vernon's Texas Civil Statutes).

1-37 (4) "Dependent" means an unmarried child, natural or
1-38 adopted, who:

1-39 (A) is less than 18 years of age;

1-40 (B) is less than 19 years of age and a full-time
1-41 student at an elementary or secondary school; or

1-42 (C) became disabled before the child's 22nd
1-43 birthday and remains disabled.

1-44 (5) "Emergency services" means only those services
1-45 relating to fire, rescue, and emergency medical services, including
1-46 support services for those duties, performed by a volunteer or
1-47 auxiliary employee of a participating department.

1-48 (6) "Fund" means the Texas emergency services
1-49 retirement fund.

1-50 (7) "Local board" means a local board of trustees
1-51 established under Section 865.012.

1-52 (8) "Member" means a volunteer or auxiliary employee
1-53 who participates in the pension system.

1-54 (9) "Pension system" means the Texas Emergency
1-55 Services Retirement System.

1-56 (10) "Qualified service" means service:

1-57 (A) for a participating department that is
1-58 recognized as an emergency services department by its governing
1-59 body and that conducts at least 48 hours of training in a calendar
1-60 year; and

1-61 (B) that is performed by a member in good
1-62 standing in the department who attends at least 20 hours of annual
1-63 training and at least 25 percent of the department's emergencies in

2-1 a calendar year or who does not attend because the member is absent
2-2 because of military duty.

2-3 (11) "State board" means the state board of trustees
2-4 established under Section 865.001.

2-5 (12) "Volunteer" means a person who performs emergency
2-6 services for civic, charitable, or humanitarian reasons, receives
2-7 no monetary compensation from a participating department, and is
2-8 not subject to the compensation requirements provided for employees
2-9 by the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et
2-10 seq.).

2-11 Sec. 861.002. PENSION SYSTEM. The pension system is a
2-12 public entity. The Texas Emergency Services Retirement System is
2-13 the name by which all its business shall be transacted, all its
2-14 funds invested, and all its cash, securities, and other property
2-15 held.

2-16 Sec. 861.003. POWERS AND PRIVILEGES. The pension system
2-17 has the powers, privileges, and immunities of a corporation as well
2-18 as the powers, privileges, and immunities conferred by this
2-19 subtitle.

2-20 Sec. 861.004. EXEMPTION FROM EXECUTION. All benefit
2-21 payments, contributions, money in the pension system fund, and
2-22 rights accrued or accruing under this subtitle to any person are
2-23 exempt from garnishment, attachment, state and local taxation,
2-24 levies, and any other process and are unassignable.

2-25 Sec. 861.005. NO DIVERSION OF ASSETS. The fund must be
2-26 maintained for the exclusive benefit of members, retirees, and
2-27 their beneficiaries. At no time before the termination of the fund
2-28 and the satisfaction of all liabilities with respect to members,
2-29 retirees, and their beneficiaries may any part of the principal of
2-30 or interest from fund assets be used for or diverted to a purpose
2-31 other than the exclusive benefit of the members, retirees, and
2-32 their beneficiaries.

2-33 Sec. 861.006. PLAN QUALIFICATION AND DISTRIBUTIONS.
2-34 (a) The legislature intends that this subtitle be construed and
2-35 administered in a manner so that the pension system's benefit plan
2-36 will be considered a qualified plan under Section 401(a) of the
2-37 Internal Revenue Code of 1986 (26 U.S.C. Section 401). The state
2-38 board may adopt rules that modify the plan as necessary to meet
2-39 those qualification requirements.

2-40 (b) Notwithstanding any other provision of this subtitle,
2-41 all distributions under this subtitle must be made in accordance
2-42 with applicable provisions of the Internal Revenue Code of 1986 and
2-43 regulations adopted under that code.

2-44 (c) The state board by rule may authorize an eligible
2-45 rollover distribution to be made in the form of a direct
2-46 trustee-to-trustee transfer.

2-47 Sec. 861.007. FORFEITURE NOT TO INCREASE BENEFITS. A
2-48 forfeiture that occurs under this subtitle may not be used to
2-49 increase the benefits that any member would otherwise receive under
2-50 this subtitle.

2-51 CHAPTER 862. MEMBERSHIP

2-52 Sec. 862.001. PARTICIPATION BY DEPARTMENT. (a) The
2-53 governing body of a department that performs emergency services
2-54 may, in the manner provided for taking official action by the body,
2-55 elect to participate in the pension system. A governing body shall
2-56 notify the commissioner as soon as practicable of an election made
2-57 under this subsection. Except as provided by Subsection (b), an
2-58 election to participate under this subsection is irrevocable.

2-59 (b) The governing body of a department that makes an
2-60 election under Subsection (a) may terminate participation in the
2-61 pension system not later than the fifth anniversary of the date of
2-62 the election to participate, except that a department that begins
2-63 participation after September 1, 2005, may not terminate that
2-64 participation.

2-65 Sec. 862.002. MEMBERSHIP BY INDIVIDUAL. (a) Except as
2-66 otherwise provided by this section, each person who performs
2-67 service as a volunteer or auxiliary employee of a participating
2-68 department is a member of the pension system.

2-69 (b) A person is not a member of the pension system if the

3-1 person:

- 3-2 (1) is less than 18 years of age;
 3-3 (2) is in a probationary period of service before
 3-4 becoming a regular member of a participating department for which
 3-5 the department is not making contributions for the service;
 3-6 (3) does not receive a certification of physical
 3-7 fitness or assignment to support duties under Section 862.003; or
 3-8 (4) is retired under this subtitle, regardless of
 3-9 whether the person continues to participate in emergency
 3-10 services-related functions for a department from which the person
 3-11 retired.

3-12 Sec. 862.003. CERTIFICATION OF PHYSICAL FITNESS. (a) A
 3-13 prospective member shall present to the local board a certification
 3-14 of physical fitness by a qualified physician. The person becomes a
 3-15 member of the pension system if the local board accepts the
 3-16 certification or if the local board assigns the person to support
 3-17 duties.

3-18 (b) A local board shall assign a person to support duties if
 3-19 the person does not present an acceptable certification and the
 3-20 person is at least 18 years of age, is not retired from the pension
 3-21 system, and is not serving a probationary period before becoming a
 3-22 regular member of a participating department.

3-23 Sec. 862.004. DEPARTMENTAL ELECTIONS AND MERGERS. The
 3-24 state board may adopt rules for governing body elections under
 3-25 Section 862.001 or for the merger of existing pension plans into the
 3-26 pension system.

3-27 CHAPTER 863. CREDITABLE SERVICE

3-28 Sec. 863.001. CREDIT FOR CURRENT SERVICE. A member is
 3-29 entitled to receive credit in the pension system for each month of
 3-30 qualified service for which the system receives the contributions
 3-31 required by this subtitle.

3-32 Sec. 863.002. CREDIT FOR MILITARY SERVICE. The pension
 3-33 system shall grant credit for qualified service for military duty
 3-34 in accordance with Section 414(u) of the Internal Revenue Code of
 3-35 1986 (26 U.S.C. Section 414(u)) and other applicable federal law.

3-36 Sec. 863.003. TRANSFER OF SERVICE CREDIT. A member who
 3-37 terminates service, except by retirement, and later resumes service
 3-38 with the same participating department or begins service with
 3-39 another participating department may transfer all previously
 3-40 accrued service credit to the new department.

3-41 Sec. 863.004. PRIOR SERVICE OF MEMBER BEFORE DEPARTMENTAL
 3-42 PARTICIPATION. The state board by rule may authorize the granting
 3-43 of credit for service with a participating department that was
 3-44 performed before the date the department began participation in the
 3-45 pension system. The costs of computing prior service credit must be
 3-46 determined on a basis that maintains the pension system as
 3-47 actuarially sound.

3-48 CHAPTER 864. BENEFITS

3-49 Sec. 864.001. ELIGIBILITY FOR SERVICE RETIREMENT ANNUITY.
 3-50 (a) The state board by rule shall determine the period of
 3-51 qualified service and, if appropriate, the age required for a
 3-52 member to receive a service retirement annuity with full benefits
 3-53 after the member terminates service with a participating
 3-54 department. The state board by rule may provide for partial vesting
 3-55 of benefits after a particular period.

3-56 (b) Vested retirement benefits are not forfeitable.

3-57 Sec. 864.002. SERVICE RETIREMENT ANNUITY. (a) A service
 3-58 retirement annuity is payable in monthly installments based on the
 3-59 governing body's average monthly contribution during the member's
 3-60 term of qualified service under this subtitle, not including a
 3-61 contribution to reduce the unfunded accrued actuarial liability of
 3-62 the pension system, and a formula adopted by the state board by rule
 3-63 that allows the pension system, assuming maximum state
 3-64 contributions are provided under Section 865.015, to be maintained
 3-65 as actuarially sound.

3-66 (b) The state board by rule may provide, for each year of
 3-67 qualified service in excess of the period provided under Section
 3-68 864.001 for full benefits, an additional amount that is a
 3-69 percentage of the person's monthly pension, compounded annually. A

4-1 person may receive a proportional credit for months of qualified
 4-2 service that make up less than a year.

4-3 Sec. 864.003. SERVICE RETIREMENT BENEFITS FROM MORE THAN
 4-4 ONE DEPARTMENT. A member who performs qualified service for more
 4-5 than one participating department may become eligible to receive a
 4-6 service retirement annuity for service from each department but, if
 4-7 the person dies while a member, the member's beneficiary must
 4-8 choose between an on-duty and off-duty death benefit, if
 4-9 applicable.

4-10 Sec. 864.004. DISABILITY RETIREMENT ANNUITY. (a) A member
 4-11 must, at the time of disability, elect between a service or
 4-12 disability retirement annuity, if eligible for both.

4-13 (b) A member who is disabled during the performance of
 4-14 emergency services duties is automatically vested 100 percent as of
 4-15 the date of disability if the disability occurs before the member
 4-16 has completed the period provided under Section 864.001 for full
 4-17 service retirement benefits.

4-18 (c) A member whose disability results from performing
 4-19 emergency services duties is guaranteed a disability retirement
 4-20 annuity of \$300 a month or a greater amount that the state board by
 4-21 rule adopts based on monthly contributions of a participating
 4-22 department for its members.

4-23 (d) A person who is determined to be temporarily disabled
 4-24 must apply to the Social Security Administration and be certified,
 4-25 not later than the second anniversary of the date the person was
 4-26 determined to be temporarily disabled, as permanently disabled by
 4-27 that agency or by any alternative procedure the state board
 4-28 provides by rule.

4-29 Sec. 864.005. CERTIFICATION AND CONTINUANCE OF DISABILITY.
 4-30 (a) A local board shall require a member who is receiving
 4-31 temporary disability benefits to file a disability rating report
 4-32 every three months from a physician chosen by the local board. If a
 4-33 report indicates a significant change of condition, the local
 4-34 board, after notice and a hearing, may adopt an order to terminate
 4-35 payments or place the member on permanent disability. The local
 4-36 board shall send a copy of each order adopted under this subsection
 4-37 to the commissioner.

4-38 (b) Disability benefits cease if the recipient becomes
 4-39 capable of performing the duties of the person's most recent
 4-40 position with a participating department or the duties of another
 4-41 occupation for which the person is reasonably suited by education,
 4-42 training, and experience. Rejection of a suitable offer of
 4-43 employment is conclusive evidence for purposes of this subtitle
 4-44 that the person is no longer eligible to receive disability
 4-45 retirement benefits, if the employment would provide the person
 4-46 with a salary equal to or greater than the salary the person was
 4-47 earning at the time the disability occurred.

4-48 (c) The state board or a local board may require financial
 4-49 information from a person as a condition to the continued receipt of
 4-50 disability retirement benefits, including federal income tax
 4-51 returns and wage earning forms. Failure to provide requested
 4-52 information is a ground for terminating benefits.

4-53 Sec. 864.006. MEMBER SERVICE DEATH BENEFITS. (a) The
 4-54 surviving spouse and dependents of a member who dies as a result of
 4-55 performing emergency services duties are entitled to receive in
 4-56 equal shares a death benefit annuity equal to two-thirds of the
 4-57 service retirement annuity that the decedent would have been
 4-58 entitled to receive if the decedent had been able to retire, vested
 4-59 at 100 percent, on the date of the decedent's death. As long as both
 4-60 the spouse and one or more dependents survive, an additional
 4-61 one-third of that annuity is payable to the dependents in equal
 4-62 shares.

4-63 (b) The beneficiary of a member who dies as a result of
 4-64 performing emergency services duties is entitled to a lump-sum
 4-65 benefit of \$5,000 or a greater amount that the state board provides
 4-66 by rule.

4-67 Sec. 864.007. MEMBER NONSERVICE DEATH BENEFIT. The state
 4-68 board by rule may provide the beneficiary of a deceased member whose
 4-69 death did not result from the performance of emergency services

duties a lump-sum benefit that is the greater of:

(1) the amount contributed to the fund on the decedent's behalf; or

(2) the sum that would have been contributed on the decedent's behalf from whatever source at the end of the period provided under Section 864.001 for full service retirement benefits.

Sec. 864.008. VESTED MEMBER DEATH BENEFIT ANNUITY.

(a) The surviving spouse of a deceased member who dies before retirement but after meeting the minimum age and service requirements for service retirement is entitled to two-thirds of the monthly annuity that the decedent would have received if the decedent had retired on the date of death.

(b) The surviving spouse of a deceased member who dies after terminating service with all participating departments and meeting a vesting requirement under Section 864.001 but before attaining the age of 55 is entitled to a death benefit annuity, beginning on the date that the decedent would have attained that age, equal to two-thirds of the monthly annuity to which the decedent would have been entitled on that date.

Sec. 864.009. RETIREE DEATH BENEFIT ANNUITY. The surviving spouse of a person who dies after retirement is entitled to two-thirds of the monthly annuity the decedent was receiving at the time of death.

Sec. 864.010. BENEFITS FOR MEMBERS AND RETIREES OF DEPARTMENT THAT WITHDRAWS FROM PARTICIPATION OR CEASES TO EXIST.

(a) The commissioner shall continue to administer benefits of the pension system for members and retirees who perform service for a formerly participating department that has withdrawn from participation in the pension system or has ceased to exist.

(b) The governing body of a political subdivision in which a department described by Subsection (a) is or was located shall perform the duties required of a local board for the members and retirees who served for the formerly participating department.

Sec. 864.011. FIRST PAYMENT OF RETIREMENT OR DEATH BENEFIT ANNUITY. The cashing or depositing of the first payment of a service, disability, or death benefit annuity by a person entitled to it is considered acceptance of the amount of the annuity and, if the annuity is based on the payee's service, is conclusive evidence for purposes of this subtitle that the payee is retired.

Sec. 864.012. CERTAIN BENEFICIARIES. (a) If a member names more than one beneficiary for a lump-sum death benefit, the pension system shall divide the benefit equally among the named beneficiaries or, if the member has designated a proportional division, each beneficiary is entitled to the proportion designated.

(b) Except as provided by Subsection (a), lump-sum death benefits are subject to the laws of descent and distribution if the decedent has not provided for testamentary disposition.

Sec. 864.013. COST-OF-LIVING INCREASE. The state board by rule may provide a cost-of-living increase for any benefit provided by the pension system. If benefits are increased, the state board shall require an increase in governing body contributions if necessary to maintain an actuarially sound pension system.

Sec. 864.014. STATE BOARD AUTHORITY FOR LUMP-SUM PAYMENTS. In lieu of any annuity otherwise payable under this subtitle, the state board by rule may provide for a lump-sum payment if the board determines that a lump-sum payment is cost-efficient or is necessary for the pension system to remain actuarially sound.

Sec. 864.015. CLAIM AND APPEAL PROCEDURE. (a) A claim for benefits must be filed with the local board. On receiving a claim, the local board shall hold a hearing to decide the claim. The local board shall send a written copy of its decision to the claimant and the commissioner.

(b) A person aggrieved by a decision of a local board relating to eligibility for or the amount of benefits under this subtitle may appeal the decision to the commissioner.

(c) An appeal under this section is begun by delivering a notice of appeal to the presiding officer or secretary of the local

6-1 board that made the decision. The notice must be delivered not
 6-2 later than the 20th day after the date of the decision and contain a
 6-3 brief description of the reasons for the appeal. The aggrieved
 6-4 person must file a copy of the notice with the commissioner.

6-5 (d) An appeal under this section is held in Austin and is a
 6-6 contested case under Chapter 2001, conducted as a de novo hearing by
 6-7 the State Office of Administrative Hearings.

6-8 (e) After a hearing under Subsection (d), the commissioner
 6-9 shall decide each appeal from a local board decision, issue a
 6-10 written opinion, and notify the local board and the claimant if the
 6-11 commissioner overrules the local board's decision.

6-12 (f) A person aggrieved by a decision of the commissioner
 6-13 under this section may appeal the decision to the state board. The
 6-14 state board shall decide each appeal based on the hearing record.

6-15 (g) A decision of the state board may not be appealed to a
 6-16 court or be subject to any other legal process.

6-17 CHAPTER 865. ADMINISTRATION

6-18 Sec. 865.001. COMPOSITION OF STATE BOARD. (a) The state
 6-19 board of the pension system is composed of nine members appointed by
 6-20 the governor from a list of not fewer than three or more than five
 6-21 nominees for each vacancy submitted by the State Firemen's and Fire
 6-22 Marshals' Association of Texas.

6-23 (b) Six trustees must be active members of the pension
 6-24 system, one of whom must represent emergency medical services
 6-25 personnel. Three trustees must be persons who have experience in
 6-26 the fields of finance, securities investment, or pension
 6-27 administration.

6-28 (c) Trustees hold office for staggered terms of six years,
 6-29 with the terms of three trustees expiring on September 1 of each
 6-30 odd-numbered year.

6-31 (d) Appointments to the state board shall be made without
 6-32 regard to the race, color, disability, sex, religion, age, or
 6-33 national origin of the appointee.

6-34 Sec. 865.002. INELIGIBILITY OF CERTAIN EMPLOYEES FOR STATE
 6-35 BOARD. (a) A person is not eligible for appointment to the state
 6-36 board if the person or the person's spouse is employed by or
 6-37 participates in the management of a business entity or other
 6-38 organization regulated by or receiving funds from the state board
 6-39 of the fund.

6-40 (b) A person may not serve as a trustee of the state board or
 6-41 act as the general counsel to the state board if the person is
 6-42 required to register as a lobbyist under Chapter 305 because of the
 6-43 person's activities for compensation on behalf of a business or an
 6-44 association related to the operation of the state board.

6-45 Sec. 865.003. COMPENSATION; EXPENSES. Trustees of the
 6-46 state board serve without compensation but may be reimbursed for
 6-47 actual and necessary expenses incurred in performing state board
 6-48 functions.

6-49 Sec. 865.004. VOTING. Each trustee of the state board is
 6-50 entitled to one vote. At any meeting of the state board, a vote by a
 6-51 majority of the trustees present is necessary for a decision by the
 6-52 trustees except that a vote regarding eligibility for service
 6-53 retirement described by Section 864.001, the computation of a
 6-54 service retirement annuity described by Section 864.002, a
 6-55 cost-of-living increase described by Section 864.013, or a lump-sum
 6-56 payment adopted under Section 864.014 requires the concurrence of a
 6-57 majority of the members of the state board.

6-58 Sec. 865.005. GROUNDS FOR REMOVAL OF TRUSTEES. (a) It is a
 6-59 ground for removal from the state board that a trustee:

6-60 (1) does not have at the time of appointment the
 6-61 qualifications required by Section 865.001(b);

6-62 (2) does not maintain during service on the state
 6-63 board the qualifications required by Section 865.001(b);

6-64 (3) violates a prohibition established by Section
 6-65 865.002;

6-66 (4) cannot discharge the person's duties for a
 6-67 substantial part of the term for which the person is appointed
 6-68 because of illness or disability; or

6-69 (5) is absent from more than half of the regularly

7-1 scheduled state board meetings that the trustee is eligible to
 7-2 attend during a calendar year unless the absence is excused by a
 7-3 majority vote of the state board.

7-4 (b) The validity of an action of the state board is not
 7-5 affected by the fact that it is taken when a ground for removal of a
 7-6 trustee exists.

7-7 (c) If the commissioner has knowledge that a potential
 7-8 ground for removal exists, the commissioner shall notify the
 7-9 presiding officer of the state board of the ground. The presiding
 7-10 officer shall then notify the governor that a potential ground for
 7-11 removal exists.

7-12 Sec. 865.006. GENERAL DUTIES OF STATE BOARD. (a) The
 7-13 state board shall employ a certified public accountant, an actuary,
 7-14 and an investment consultant for the fund and may acquire computer,
 7-15 custodial, or investment management services for the fund. The
 7-16 costs of accounting, actuarial, investment consulting, computer,
 7-17 custodial, or investment management services and other
 7-18 administrative expenses may be paid from income earned by
 7-19 investment of the fund. No portion of the corpus or income of the
 7-20 fund may be used for purposes other than the benefit of
 7-21 members, retired emergency services personnel, and their
 7-22 beneficiaries.

7-23 (b) The state board shall adopt rules necessary for the
 7-24 administration of the fund. The state board shall adopt rules to
 7-25 provide a proration of the requirements for qualified service for a
 7-26 member who performs service for only a portion of a calendar year
 7-27 and may provide by rule for the manner in which member attendance or
 7-28 training hours are to be computed.

7-29 Sec. 865.007. ADMINISTERING SYSTEM ASSETS. (a) The state
 7-30 board shall administer all assets of the pension system. The state
 7-31 board is the trustee of the pension system's assets.

7-32 (b) The state board may acquire, hold, manage, purchase,
 7-33 sell, assign, trade, transfer, and dispose of any security,
 7-34 evidence of debt, or other investment in which the pension system's
 7-35 assets may be invested.

7-36 (c) The state board or the commissioner may accept on behalf
 7-37 of the pension system gifts of money or other property from any
 7-38 public or private source.

7-39 Sec. 865.008. INVESTMENT OF ASSETS. (a) If a surplus
 7-40 exists in the fund over the amount necessary to pay benefits due for
 7-41 a reasonable period of time, the state board shall invest the
 7-42 surplus.

7-43 (b) The assets of the pension system shall be invested and
 7-44 reinvested in accordance with Section 67, Article XVI, Texas
 7-45 Constitution. A determination of whether the state board has
 7-46 exercised prudence with respect to an investment decision must be
 7-47 made, taking into consideration the investment of all assets of the
 7-48 trust over which the state board has management and control rather
 7-49 than considering the prudence of a single investment.

7-50 Sec. 865.009. TRUST FUND. The Texas emergency services
 7-51 retirement fund is a trust fund established with the comptroller.

7-52 Sec. 865.010. COMMISSIONER'S DUTIES. (a) The commissioner
 7-53 shall oversee the distribution of all benefits.

7-54 (b) The commissioner shall collect the revenues for the fund
 7-55 from the governing bodies of participating departments.

7-56 (c) The commissioner may request and administer, in an
 7-57 emergency, state funds in addition to those required by this
 7-58 subtitle and appropriated by the legislature.

7-59 (d) The commissioner is responsible for recovering any
 7-60 fraudulently acquired benefits. If it appears that fraud has
 7-61 occurred, the commissioner shall notify the appropriate local board
 7-62 and the claimant and hold a hearing. If after the hearing the
 7-63 commissioner determines that benefits have been or are being
 7-64 fraudulently acquired, the commissioner shall seek action in a
 7-65 court.

7-66 Sec. 865.011. RECORDS AND REPORTS. (a) The commissioner
 7-67 may at any reasonable time examine the records and accounts of local
 7-68 boards.

7-69 (b) The commissioner shall require in a timely manner

8-1 periodic reports from the local boards and shall prepare necessary
 8-2 forms for use by local boards.

8-3 (c) The commissioner shall prepare an annual report on the
 8-4 activity and status of the fund and submit the report to the
 8-5 governor, the lieutenant governor, and the speaker of the house of
 8-6 representatives.

8-7 Sec. 865.012. LOCAL BOARD. (a) A local board is composed
 8-8 of:

8-9 (1) one trustee selected by the governing body of the
 8-10 political subdivision of which a participating department is a
 8-11 part;

8-12 (2) three trustees who are active members representing
 8-13 a participating department chosen by a majority of the emergency
 8-14 services personnel in the department who are eligible to
 8-15 participate in the pension system; and

8-16 (3) two trustees who are representatives of the
 8-17 political subdivision who are chosen by the other members of the
 8-18 local board.

8-19 (b) Trustees of a local board serve staggered two-year
 8-20 terms. At the first meeting of a local board, the trustees shall
 8-21 draw lots to determine the length of the term to be served, with the
 8-22 terms of two trustees to be two years and the terms of two trustees
 8-23 to be one year. The first appointments of trustees appointed by
 8-24 other members of the local board are to be one trustee for a
 8-25 two-year term and one trustee for a one-year term.

8-26 (c) A local board shall hold not fewer than four meetings a
 8-27 year under Chapter 551.

8-28 (d) A vacancy on a local board is filled for the remainder of
 8-29 the unexpired term by the procedure by which the position was
 8-30 originally filled.

8-31 (e) A local board shall elect a presiding officer from the
 8-32 trustees at its first meeting.

8-33 (f) At any meeting of a local board, a vote by a majority of
 8-34 the trustees present is necessary for a decision by the trustees.

8-35 (g) A trustee of a local board may not receive compensation
 8-36 for service as a trustee but may be reimbursed by the governing body
 8-37 of a participating department for actual and necessary expenses
 8-38 incurred in performing local board functions.

8-39 Sec. 865.013. MONITORING OF CONTRIBUTION SUBMISSION. A
 8-40 local board shall monitor the timely submission of required
 8-41 contributions to the commissioner.

8-42 Sec. 865.014. LOCAL CONTRIBUTIONS. (a) Each governing
 8-43 body of a political subdivision of which a participating department
 8-44 is a part shall contribute for each member for each month of service
 8-45 beginning on the date that the member enters the pension system at a
 8-46 rate determined in accordance with Subsection (b) and may make
 8-47 additional contributions as determined by the political
 8-48 subdivision. If the participating department is located in more
 8-49 than one political subdivision, the governing bodies of the
 8-50 political subdivisions shall contribute equally for each member for
 8-51 each month of service.

8-52 (b) The state board by rule shall determine the minimum
 8-53 contribution for each member of a participating department for each
 8-54 month of qualified service at a rate the state board determines
 8-55 necessary, after consultation with the actuary, to make the pension
 8-56 system actuarially sound.

8-57 (c) Contributions required as provided by this section
 8-58 shall be paid at the times and in the manner that the state board
 8-59 prescribes by rule. Contributions required by this section shall
 8-60 be submitted by electronic funds transfer unless the commissioner
 8-61 grants an exception based on the difficulty of a participating
 8-62 department's use of that payment method. Contributions that are
 8-63 not paid within the time required by the state board accrue interest
 8-64 at the most recent assumed actuarial rate of return on investments
 8-65 of the fund.

8-66 (d) The state board may by rule require a monthly
 8-67 contribution from political subdivisions that do not participate in
 8-68 the pension system but whose employees or former employees are
 8-69 members or retirees of the pension system in an amount necessary to

9-1 pay the expenses of administering benefits for those persons.

9-2 (e) The attorney general may file suit to collect unpaid
9-3 accrued interest. Interest recovered shall be deposited in the
9-4 fund.

9-5 Sec. 865.015. STATE CONTRIBUTIONS. The state shall
9-6 contribute the amount necessary to make the pension system
9-7 actuarially sound each year, except that the state's contribution
9-8 may not exceed one-third of the total of all contributions by
9-9 governing bodies in a particular year. If the state contributes
9-10 one-third of the total contributions of the governing bodies in one
9-11 year, the pension system is presumed to be actuarially sound.

9-12 Sec. 865.016. ADMINISTRATIVE PENALTY. (a) The state board
9-13 may impose an administrative penalty on a local board that fails to
9-14 file a required report in a timely manner.

9-15 (b) The amount of the penalty may not exceed \$5,000. The
9-16 amount shall be based on:

9-17 (1) the seriousness of the violation, including the
9-18 nature, circumstances, extent, and gravity of the violation;

9-19 (2) the history of previous violations;

9-20 (3) the amount necessary to deter a future violation;

9-21 (4) efforts to correct the violation; and

9-22 (5) any other matter that justice may require.

9-23 (c) The state board may adopt rules for determining the
9-24 amount of a penalty.

9-25 (d) The enforcement of the penalty may be stayed during the
9-26 time the order is under judicial review if the local board pays the
9-27 penalty to the clerk of the court or files a supersedeas bond with
9-28 the court in the amount of the penalty. A local board that cannot
9-29 afford to pay the penalty or file the bond may stay the enforcement
9-30 by filing an affidavit in the manner required by the Texas Rules of
9-31 Civil Procedure for a party who cannot afford to file security for
9-32 costs, subject to the right of the state board to contest the
9-33 affidavit as provided by those rules.

9-34 (e) The attorney general may file suit to collect the
9-35 penalty. Penalties recovered will be deposited in the fund.

9-36 (f) A proceeding to impose the penalty is considered to be a
9-37 contested case under Chapter 2001.

9-38 Sec. 865.017. INTERRUPTION OF PAYMENTS. (a) The pension
9-39 system shall withhold payment of a monthly retirement annuity if a
9-40 participating department attempts to provide information to the
9-41 commissioner relating to continued eligibility to receive the
9-42 payments and the recipient fails to cooperate or provide the
9-43 requested information. The state board may adopt rules to enforce
9-44 this subsection.

9-45 (b) The pension system may not begin service or disability
9-46 retirement annuity or death benefit payments based on the service
9-47 of a person whose local board is not current in its filing of a
9-48 required periodic report.

9-49 Sec. 865.018. CERTIFICATION OF FUND. (a) In this section,
9-50 "qualified actuary" means a fellow of the Society of Actuaries or a
9-51 member of the American Academy of Actuaries who has at least five
9-52 years of experience with public retirement systems.

9-53 (b) The commissioner and the state board shall certify the
9-54 actuarial and financial soundness of the fund every two years with
9-55 the assistance of a qualified actuary.

9-56 Sec. 865.019. CONFIDENTIALITY OF INFORMATION ABOUT
9-57 MEMBERS, ANNUITANTS, AND BENEFICIARIES. (a) Information
9-58 contained in records that are in the custody of the pension system
9-59 concerning an individual member, annuitant, or beneficiary is
9-60 confidential under Section 552.101 and may not be disclosed in a
9-61 form identifiable with a specific individual unless:

9-62 (1) the information is disclosed to:

9-63 (A) the individual or the individual's attorney,
9-64 guardian, executor, administrator, conservator, or other person
9-65 who the commissioner determines is acting in the interest of the
9-66 individual or the individual's estate;

9-67 (B) a spouse or former spouse of the individual
9-68 after the commissioner determines that the information is relevant
9-69 to the spouse's or former spouse's interest in member accounts,

10-1 benefits, or other amounts payable by the pension system;
10-2 (C) a governmental official or employee after the
10-3 commissioner determines that disclosure of the information
10-4 requested is reasonably necessary to the performance of the duties
10-5 of the official or employee; or

10-6 (D) a person authorized by the individual in
10-7 writing to receive the information; or

10-8 (2) the information is disclosed under a subpoena and
10-9 the commissioner determines that the individual will have a
10-10 reasonable opportunity to contest the subpoena.

10-11 (b) This section does not prevent the disclosure of the
10-12 status or identity of an individual as a member, former member,
10-13 retiree, deceased member or retiree, or beneficiary of the pension
10-14 system.

10-15 (c) The commissioner may designate other employees of the
10-16 pension system to make the necessary determinations under
10-17 Subsection (a).

10-18 (d) A determination and disclosure under Subsection (a) may
10-19 be made without notice to the individual member, annuitant, or
10-20 beneficiary.

10-21 SECTION 2. The Texas Statewide Emergency Services
10-22 Retirement Act (Article 6243e.3, Vernon's Texas Civil Statutes) is
10-23 repealed.

10-24 SECTION 3. This Act takes effect September 1, 2005.

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